PART II.

RULES UNDER THE LAND ACQUISITION ACT, 1870.*

The following Rules prescribed by His Excellency the Governor in Council under section 59 of the Land Acquisition Act X of 1870, together with the instructions laid down for the administration of the Act, are published for general information :—† (*B. G. G.*, 1873, p. 226.)

Government revenue, &c., if remitted in compensation to be deducted from award.

1.‡ Whenever it shall appear to the Collector desirable that the Government revenue or haks of any kind shall be remitted in payment or part-payment of the compensation to be awarded for land taken under this Act, he shall estimate the value of such revenue or haks, and deduct it from the estimated compensation to be awarded to the owner of the land.

Principles for calculating compensation to be offered.

2. If the land has been surveyed and assessed to the land revenue under the provisions of Act I of 1865, or when it bears an assessment according to existing practice, the value of the Government claims on such land shall be calculated at not less than twenty-five times the survey assessment; but houses, trees, crops, wells and improvements shall be estimated separately on the best information available to the Collector.

When land unassessed.

3. When the land to be taken under this Act has not been so surveyed and assessed under Act I of 1865, or does not bear an assessment

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* Local Funds and Cantonment-Funds are not public revenues within the meaning of the proviso of section 6 of Act X of 1870. (G. R. 255 of 14th January 1882 and 1079 of 16th February 1882) Acts relating to the acquisition of lands for public purposes must be construed strictly in favor of the subject. (12 B. H. C. Reports, 250.)

† These rules are published as those actually in use. To give them validity under section 59 of the Act the sanction of the Governor General in Council would have been necessary.

‡ (*a*) Redemption of land tax is not permissible under the orders of the Government of India. (G. R. 1860, dated 29th February 1884, R. D.)

(*b*) When land is taken up under the Land Acquisition Act for a Municipality or Company, " such Municipality or Company should be held liable for the revenue, but might be allowed to compound for it." (G. R. 4390, dated 2nd June 1884, R. D.)

(*c*) Reduction of judi in cases of acquisition under the Act.

RESOLUTION.—The case seems to stand thus :—

An Inámdár was owner of the entire profits of the land taken up, except the judi.

If he received compensation equal to the capitalized entire profits, he was entitled to no reduction of the judi thereon.

If he received compensation equal to the capitalized profits less the judi thereon, he was entitled to a reduction equal to the judi thereon.

If he gave up the land without compensation he was no longer liable for the judi thereon, and was entitled to a reduction equal to the judi thereon.

In the 2nd and 3rd case Government would have a claim to receive the judi on the land or its capitalized value from the party to whom the land is transferred.

In any case Government should clearly not be mulcted in the portion of the assessment which they did not receive and which belonged to the inámdár.

2. The case of service lands is different. There the assessment is what Government allowed to the holder in return for service, and it reverts to Government when he relinquishes the land. (G. R. 4547, 6th June 1885, R. D.)

according to existing practice, the Collector shall proceed to assess it on the best information he can procure, and the value of the Government claims on such lands shall be calculated at not less than twenty-five times the assessment fixed by the Collector, with the approval of the Revenue Commissioner.

Compensation how to be recorded.

4. When making an award of compensation to be given under section 42 of Act X of 1870, the Collector or Court shall record separately the compensation to be granted under the first clause of section 24 of the Act, which concerns the market value of the land and the portion of compensation to be granted under the 2nd, 3rd, and 4th clauses of that section.

Procedure when temporary occupation is required.

5. The procedure required for a reference under section 15 shall be applicable to a reference under section 43.

Reference if dispute as to apportionment.

6. When the amount of compensation to be awarded under section 43 (for temporary occupation of land) has been fixed, and there is a dispute as to the division of the amount among the persons interested, the Collector shall refer such dispute to the Court for decision, and the procedure prescribed by section 39 shall be applicable to such reference.

Informalities in proceedings.

7. Any informality in the proceedings of the Collector or Court under this Act shall not vitiate the award, unless the interests of any party or parties are injuriously affected thereby.

Instructions for the Administration of the Land Acquisition Act X of 1870.

Collector cannot delegate his powers under the Act.

1. The first part of Act X of 1870 is concerned principally with definitions, among which the only one to which it is necessary to direct special notice is that of the expression "Collector." This includes "any officer specially appointed by the Local Government to perform the functions of a Collector under this Act," but no provision is made in the Act for the delegation by the Collector of any of his powers to a Deputy or Assistant Collector; no such delegation is lawful.

When land required for Guaranteed Railways.

2. Rules for taking up land for Guaranteed Railways were issued by the Government of India in their Circular No. 55 of 29th June 1861 as modified by No. 27 of 27th September 1869 (Appendix H). The applications for this land will be forwarded by the Railway Companies to the Consulting Engineer for Railways, who will, when necessary, submit them for the orders of Government.

When land required for State Railways.

3. The Rules for taking up land for State Railways are contained in Government of India's Circular No. 10, dated 25th August 1871 (Appendix K).* Land for this purpose will also be applied for through the Consulting Engineer for Railways, unless otherwise ordered.

Land required in other cases.

4. When land is required for public purposes in any other case, the officer requiring it should, in the first instance, consult the Collector of the disrict, and obtain from him the fullest possible information as to the probable cost of the land per acre or otherwise, together with the value of buildings, &c., situated on the property, and for which compensation will have to be paid. Upon the information thus obtained, an estimate should be framed by the said officer, and submitted through the proper channel for sanction. When sanction to an estimate, framed as above directed, has been obtained, the said officer should commit the matter to the Revenue officer, who will take the necessary preliminary action for the appropriation of the land under the Act, or for its acquisition by private negotiation, subject to the instructions which he may receive from the Revenue authorities to whom he is subordinate. (Notn. No. 1133, *B.G.G.*, 1879, Pt. I., p. 279.)

The sanction will be communicated by Government to the chief officer of the department through which the reference has been made, and also to the Commissioner, and Controller of Public Works Accounts, or the Accountant General, as the case may be; and the Government order will also state against what particular item of the budget the expenditure is to be charged.

Course when estimate sanctioned is likely to be exceeded.

5. When the estimate originally framed and sanctioned is likely, when the land comes to be acquired, to be materially exceeded, the Revenue officer shall refer the matter again to the officer concerned to ascertain whether the object sought cannot be otherwise secured, either by obtaining some other plot of land in lieu of that originally proposed for acquisition, or in some other manner. When such a reference is made, the said officer should, in personal communication with the Revenue officer, consider the case, and, if it is found impossible to obtain the land required without materially exceeding the original estimate, should submit a revised estimate for sanction. (Do. do.)

Application by Collector to be made to Government in the Revenue Department.

6. Whenever it is thought necessary or expedient that steps should be taken for the acquisition of the land under the Act, an application to that effect should be submitted, with the reasons for the same, (Do do.)

* This Circular has been superseded by Circular No. 21 of 12th October 1881. (*See* Appendix K.)

by the Collector, through the ordinary channel, to Government in the Revenue Department.*

Preliminary investigation under sections 4 and 5.

7. Sections 4 and 5 lay down certain rules, under which a preliminary investigation is to be made into the condition and circumstances of lands which the Local Government may consider likely to be needed for any public purpose. It is to be observed that the preliminary investigation provided for by these sections of the Act will not be, in all cases, necessary. In ordinary cases, the demarcation and measurement required by section 8 of the Act will answer all the purposes which the provisions of sections 4 and 5 are designed to serve under peculiar circumstances. Should any such circumstances exist, they should be reported to Government by the Collector, or head of the department for the use of which the land is required, with a view to the publication of a notification under section 4; and, upon such publication, the following Rules will be observed in carrying out the provisions of the sections under notice.

By whom to be conducted.

8 The conduct of the preliminary investigation will, unless otherwise specially ordered, fall into the hands of the chief local representative of the particular department or company for the use of which it is proposed to occupy the land. In the case of lands required for local or municipal purposes, the Collector of the district, or one of his Assistants or Deputies, is to be deemed the representative of the municipality or local fund committee.

Notification under section 4 of the Act: its form.

9. The officer entrusted with the preliminary investigation should, in the first instance, prepare a draft notification, in Form A., for issue under section 4 of the Act, and submit the same to Government through the Collector.

Issue of public notice.

10. After publication of the notification in the *Government Gazette*, due notice of the substance of such a notification will be publicly given by the Collector at convenient places in the locality, and the Collector must invariably apprize the officer entrusted with the preliminary investigation of the issue of the public notice prescribed by section 4. It is illegal for such officer to commence his investigation until he is certified of such issue of the notice.

Preparation of map and declaration.

(Notn. No. 1133, *B. G. G.*, 1879, Pt. I. p. 279.)

11. After having been informed of the issue of the public notice from the Collector, the officer entrusted

* When land has to be taken up for public purposes either by private arrangements or under the Land Acquisition Act, the Collector or other officer or department requiring it should invariably report the probable amount of compensation which will have to be paid for it and the source from which it is proposed to meet the charge. The draft notification to be published under the Act should be prepared in strict accordance, as far as possible, with the form of declaration given in Appendix B to the rules prescribed under the Act (G. R. No. 615, 24th January 1883, R. D.)

with the preliminary investigation will proceed to examine the land according to the provisions of section 4, and to prepare a map or plan of the land in accordance with prescribed rules, and make it over to the Collector, who shall prepare the draft declaration under section 6. He will take care to tender payment for all damage under section 5.

Investigation under section 5.

12. The investigation to be made by the Collector in cases referred to him under section 5 is a summary one. He must be guided by the result of a local inquiry, which he is at libe to make either in person or by deputy. He v himself, however, be held responsible for the award made by him, and if the claim be for any sum exceeding Rs. 300, the enquiry should be conducted by an Assistant or Deputy Collector, but the award must be made by the Collector himself.

Procedure when no preliminary investigation is necessary.

13. When no preliminary investigation is considered necessary under section 4, the Collector, on being applied to by the Consulting Engineer for Railways or other responsible executive officer, and on being furnished with the plan of the land required, and other requisite particulars, shall prepare the draft declaration for submission to Government. (Notn. No. 1133, *B. G. G.*, 1879, Pt. I., p. 279.)

Declaration what to contain.

14. Although the particular land to be acquired must be described in the declaration to be made under section 6, the law does not require that its precise boundaries or area should be exactly specified. The declaration should be in the form of Appendix B., and should be so generally worded that no impediment may afterwards arise from its terms to the appropriation of all the land that can possibly be required. In other respects the declaration should be as precise; and should contain as accurate a specification of the boundaries, as possible. The declaration will be issued by Government in the Revenue Department. (Notn. No. 1501, *B. G. G.*, 1879, Pt. I., p. 402.)

Issue of declaration.

15. When issuing the declaration, Government will at the same time direct the Collector or one of his Assistants to take order for the acquisition of the land. The Collector, in making his report, should mention the name of the Assistant he wishes to take order under section 7. (Notn. No. 1133, *B. G. G.*, 1879, Pt. I., p. 279.)

Demarcation and departmental map and preparation of surveyor's plans, when land is required for other than the Revenue Department.

16. After the issue of the declaration, the officer who was entrusted with the preliminary investigation, or, in case no such investigation shall have been held, some officer on behalf of the department or company for which the land is required, such department, not being the Revenue Department, shall, if it has not already been done, mark out the boundaries of the land, and furnish the Collector with a plan or map of it, prepared according to rule. The

Collector will then proceed to have the plan carefully tested by a competent surveyor, and, in case of any error or discrepancy being apparent, shall correct it.

Demarcation and departmental map, and preparation of surveyor's plans when land is for the Revenue Department.

17. If the land be required for the Revenue Department, the necessary demarcation and the preparation of the map will be carried out by an officer deputed for the purpose by the Collector.

Surveyor's work to be tested, and rates of rent, &c., to be ascertained.

18. When the Collector or other officer vested with the necessary powers under section 3 shall have satisfied himself that the plan is correct, he will proceed to ascertain the rates of rent paid, and will record them, and will appraise the value of the land, houses, wells, trees, or crops, or improvements upon it. The Collector may delegate to an Assistant or Deputy Collector the conduct of the inquiry contemplated in this paragraph.

Issue of notices under section 9, and their form.

19. As soon as the operations prescribed by the last preceding instruction have been completed, the notices described in section 9 should be issued and subsequent proceedings taken in accordance with the law. Forms of notice will be found in Appendices C and D. A form of requisition under section 10 is given in Appendix E.

Additional compensation.

20. The Collector's attention is drawn to the 4th rule of the rules having the force of law, published in *Government Gazette* dated 13th March 1873, which directs the Court to make a separate finding, under the first head of section 24, for the calculation of the additional compensation.

* Awards to be made with due caution.

21. An award made by a Collector cannot, if it is made in accordance with the provisions of the law, be subsequently amended by any authority. Officers should, therefore, be most careful before making an award, to take all precautions to avoid error or oversight.

Taking possession under section 16.

22. Section 16 empowers the Collector, or other officer vested under section 3, to take possession of the land as soon as he has made an award or a reference to the Court, and the Act empowers no one else to do so. It is to be distinctly understood that occupation of such land by any other officer or person, without written authority from the Collector, is illegal, and that the limitation prescribed by the latter clause of section 58 will not apply to any suit that may be instituted against

*Memo. by L. R. :—A person who, when land is being acquired under Act X of 1870, says that the land is his, but puts in no claim for compensation for it, surrenders any right he may have in the land and is no longer 'a person making a claim in respect thereof.' The Collector without deciding upon the merits of such person's alleged title should, I think, proceed with the inquiry as if that person had not appeared at all. (G. R. No. 6971, 30th September 1886, R. D.)

the offender. When the land has been taken up, possession should be given by the Collector to an officer nominated, in writing, to receive it by the Railway Company, Executive Engineer, or other authority on whose behalf the application was originally made, and to no other person.

Occupation under section 17.

23. In cases of urgency, section 17 allows occupation by the Collector, under special orders from the Local Government, before award or reference. But the Collector must offer compensation for crops and trees on such land. It is only necessary, in regard to this section, to notice that it applies to "waste and arable" land only, and not to land occupied by roads, tanks, buildings, &c.

Nomination of assessor under section 19.

24. Sections 18 to 36 regulate the procedure to be adopted by the Court in the investigation of cases referred by the Collector. The only sections among them, other than sections 24 and 25 already referred to, which concern the Collector, are sections 18, 19 and 35, and their provisions call for no special remark, except that the assessor to be nominated by the Collector under section 19 should be, as a rule, an officer of Government specially selected for that purpose.

Collector is responsible for disbursements under sections 40 to 42.

25. The rules for payment are contained in sections 40 to 42. The Collector is personally responsible for the disbursement of the amount as soon as it falls due, under the provisions of these sections. If the amount to be disbursed is likely to exceed the funds at the Collector's command, he should take timely steps for obtaining, in accordance with departmental instructions, the necessary supply of money before the date on which the payment becomes due; but payment must, in any case, be made when due.*

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* Memo. by L. R :—"Section 40 of Act X of 1870 directs that 'payments of the compensation shall be made by the Collector according to the award to the persons named therein.' There is no provision for the payment of the money into Court and I think it would be useless to ask the Court to take charge of it.

"2. If the persons entitled to compensation abstain from applying to the Collector for it till the period of limitation[1] expires, their claim to it will be extinguished, but until the expiry of that period they can claim it at any time. It is not competent to the Collector or to Government by notice or otherwise to extinguish their claim before the expiry of the period of limitation.

[1] *i. e.* one year from the date of determining the amount of the compensation (see Act XV of 1877, Schedule II, Article 17).

* * *

The Collector need not trouble to issue any further notice to the parties, and as a rule it is unnecessary that he should issue a notice at all. (G. R. No. 227 of 10th January 1884, R. D.)

Letter from Accountant General.—The orders of the Government of India contained in G. R. R. D. No. 5518, dated 4th August 1886, require that compensation should be paid into the Government Treasury as revenue deposits after a year from the award, and be then treated in the same manner as other revenue deposits, being credited to Government only if unclaimed within three years. Even after being credited to Government payment may be made with the permission of the Accountant General, (C. A. Code, ch. XIV, para. 12). Resolution.—The orders of the Government of India may be carried out. (G. R. No. 2753, 4th May 1887, R. D.)

Procedure when payment is to be made for public or other service lands.

26. When the lands have been held heretofore free of rent in cash or kind, or on a quit-rent, on condition of the performance of some public service, the Collector should, if necessary, refer the matter to the Revenue Commissioner, in view to obtain instructions for the due representation, before the Court making the award, of the Government interest involved in the apportionment of the compensation in respect to its lien, for the purposes of the public service.

Disbursement of costs under section 8; and

27. The Collector must disburse all costs of measurement under section 8. Costs when incurred under sections 4 and 5 will be disbursed by the officer entrusted with the preliminary investigation.

Abatement of revenue.

28. The Act does not authorise the Collector, whether the award shall have been made by himself or by the Court, to make any portion of the payment in the form of an abatement of the Government revenue; but by rules passed by Government, and having the force of law, provision has been made to that effect, and it will be the duty of the Collector, before proceeding to determine the amount of compensation to be allowed, to decide, after careful consideration, whether any portion of the payment should or should not be made in the form of such abatement, and to pay strict attention to those rules which will be found in *Government Gazette* dated 13th March 1873. He will be guided in his decision by the principle laid down in the next succeeding paragraph, and, in cases referred by him to the Civil Court for adjudication, he shall communicate his decision on this point to the Court, which is bound, under the rules, to give effect to it.

Adjustment of value of revenue abated when land is taken up for Government.

29. When the land may be acquired for Government, the account to which the compensation money may be debited should also be charged with the value of the Government revenue abated, and such amount should be credited *per contra* under the head of land revenue.

Adjustment of value of revenue abated when land is taken up for municipalities and companies.

30. When land is acquired for municipalities and companies, they will be required, in cases when payment of compensation may have been made, partly or wholly by an abatement of revenue, to pay to Government, in addition to the cash compensation awarded to persons interested in the land, the value of the abatement of Government revenue made for such land as recorded in the award calculated at not less than 25 years' purchase.

Additional compensation under section 42.

31. The attention of Collectors is called to the provisions of section 42, by which an additional compensation of fifteen per cent. on the *market value*, not the total award, is to be paid to the owners of the land occupied.

Temporary occupation of land under sections 43 to 45.

32. Sections 43 to 45 prescribe the procedure to be followed in procuring temporary occupation of land. All the procedure required by paragraph 13 of the instructions will apply. Generally, also, the same procedure will apply as in cases of land taken permanently.

Acquisition of land for companies under sections 46 to 50.

33. Sections 46 to 50, making special provision for the terms on which Government will take up lands for the use of companies, need no particular comment. The officer of any company for whom Government may undertake to acquire land will, when authorised under section 4, proceed according to the instructions already given. Under section 50, the agreement must appear in the *Gazette of India* as well as in the Local Official *Gazette*.

Awards under section 54 made on summary inquiry.

34. The award of the Collector under section 54 must be made, as under section 5, on a summary inquiry, but a record should be kept :—the Collector's order is final.

Tabular returns.

35. When the case has been appealed, it will be submitted with Statement F., and will show the award as finally determined. And as soon as the time for an appeal has passed, the Collector shall forward to Government the information contained in Appendix G.

Disbursement* how to be made, and bills to be submitted.

36. Whenever a special officer is deputed for taking up lands for public purposes, as for a railway, canal, or road, he will be supplied with funds by the Controller of Public Works Accounts, by means of credit orders, and he will render to that officer monthly accounts of expenditure, as prescribed for a civil disbursing officer. In all other cases, the Collector will make the necessary disbursement from his general treasury balance, and will enter the expenditure, in his cash account, under the head to which it is properly debitable, for adjustment by the Accountant General.

Alienations to be noted in General Register (A).

37. Alienations of land under this Act should be carefully noted in the village maps and registers.

No registration of receipts for money paid under awards necessary.

38. Receipts for money paid under awards under the Land Acquisition Act, 1870, do not need to be registered † Notn. No. 3025, *B. G. G.*, 1889, Pt. I., p. 297.

* For procedure to be observed in the payment of compensation for land taken up under the Land Acquisition Act *see* note at end of this part, *infra* p. 101.

† Receipts for money paid for land acquired by *private agreement* are compulsorily registrable when the amount of consideration is one hundred rupees or upwards. In such cases clause (*c*) of section 17 of Act III of 1877 is applicable because the receipts are not mere receipts for money. They are the only written evidence of the agreement and they show that the money is received on account of the assignment of the payees'

39. Although the Collector is vested with full power under the Act, he is to act under the general instructions of the Commissioner.

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right, title and interest in the property concerned. (G. R. 933, dated 31st January 1885, R. D.). The fees for registration of receipts in the case of lands purchased by agreement for forests should be paid out of the sum sanctioned by Government for expenditure on the taking up of such lands. (G. R. 5175, dated 24th June 1885, R.D.)

(Memo. by Acting L. R.)—"2. In all cases under the Land Acquisition Act, 1870, an award must be drawn up.

"If the amount of compensation is settled by the agreement of the persons interested, the *Collector must* make the award under his hand for the same.

"The award must then be filed in the Collector's office (section 14 of X of 1870), but no stamp is chargeable on the original, and no fee is chargeable on a copy thereof supplied to the parties claiming under it (section 57 of X of 1870), and registration is unnecessary (section 17 (*i*) of III of 1877).

"Such award is *conclusive evidence* not only of the value of the land and the amount of compensation allowed for the same (section 14 of X of 1870), but also of any *apportionment* agreed to by the persons interested (section 37). If the parties interested do not agree, either as to the amount or apportionment, a reference to the District Court must follow, and the award of that, or of the Appellate, Court is then such conclusive evidence.

"3. It follows that any other evidence would be inconclusive and secondary on these points.

"4. But the title to the land passes not by the award, but by virtue of proceedings taken in accordance with the Act. If all the preliminaries required have been observed, the land vests absolutely in Government (section 16 of X of 1870),

(*a*) on the making of an award on agreement, or

(*b*) on reference to the Court in case of disagreement, or

(*c*) within fifteen days of the notice in cases of urgency, if the land be *waste* or *arable*, even prior to award or reference, if the Local Government so direct (section 17),

and the Collector is then entitled to take possession (section 16), unless under section 41 he allows any occupants thereof to remain in possession, until it is required.

"5. There is no necessity for registration of any receipt on payment. The payment of compensation is not consideration on account of the creation, declaration, assignment, limitation or extinction of a right, title or interest. The payee's right, title and interest are extinguished by the operation of the law, and the payment is not consideration for the extinction of title, but compensation fixed by an award for losses of various kinds sustained in consequence of the compulsory acquisition. The title is extinguished or assigned not because of the payment received, but because of the exercise of statutory powers.

"6. A receipt, moreover, if taken, would without registration be evidence admissible to prove the satisfaction of all claims between the parties, and the actual payment of money is a fact always susceptible of proof by oral evidence without production of a written or registered acknowledgment. (G. R. No. 9767, 24th December 1889, R. D.)

I. L. R. 4 B. 235.
Do. 5 B. 181.
Do. 2 B. 489.
7 M. H. C. R. 1.

APPENDIX A.

[See paragraph 9 of Instructions.]

Form of Declaration under section 4, Act X of 1870.

Whereas it appears to the Governor of Bombay in Council that land is likely to be required to be taken by Government at the public expense for a public purpose, *viz.*, for , in the village of , Táluka , Zilla ; it is hereby declared that for the above purpose a piece of land measuring, more or less, acres, gunthas, of standard measurement, bounded on the (*here specify the boundaries*), is likely to be required within the aforesaid village of

This declaration is made, under the provisions of section 4 of Act X of 1870, to all whom it may concern, who are hereby warned not to obstruct or interfere with persons employed on the land.

APPENDIX B.

[See paragraphs 11 and 14 of Instructions.]

Form of Declaration under section 6, Act X of 1870.

Whereas it appears to the Governor of Bombay in Council that land is required to be taken by Government at the public expense for a public purpose, *viz.*, for , in the village of , Táluka , Zilla ; it is hereby declared that for the above purpose a piece of land measuring, more or less, acres, gunthas, bounded on the (*here specify the boundaries*), is required within the aforesaid village of

This declaration is made, under the provisions of section 6, Act X of 1870, to all whom it may concern, who are hereby warned not to obstruct or interfere with persons employed on the land.

APPENDIX C.

[See paragraph 19 of Instructions.]

Form of Notice to be published under paragraphs 1 and 2, section 9, Act X of 1870, for land to be taken up.

Notice is hereby given that acres, gunthas, more or less, of land situate in or near the village of , bounded as below, and recently marked out and measured, is about to be taken by Government for a (*here specify the purpose*) under Act X of 1870, in accordance with a declaration No. , dated , published in the *Government Gazette* of the . All persons interested in this land are hereby called upon to appear personally or by agent on the (*enter a date not less than fifteen days from the date of the publication of the notice*) at the office of at , to state the nature of their interest in the land, and the amount and particulars of their claims to compensation for the same.

Boundaries.

North.	East.
South.	West.

Collector.

APPENDIX D.

[See paragraph 19 of Instructions.]

Form of Notice to be issued under paragraphs 3 and 4, section 9, Act X of 1870, to occupiers of the land to be taken up, and other persons known or believed to be interested in it or to be entitled to act for persons so interested.

Notice is hereby given that acres, gunthas, more or less, of land situate in or near the village of , bounded as below, and recently marked out and measured, is about to be taken by Government for a (*here specify the purpose*) under Act X of 1870, in accordance with a declaration, No. , dated , published in the *Government Gazette* of the . If you have any interest in this land or are entitled to act for persons so interested, you are hereby called upon to appear personally or by agent on the (*enter a date not less than fifteen days from the date of the publication of the notice*) at the office of , at , to state the nature of such interest in the land, and the amount and particulars of any claim you may wish to prefer for the same.

Boundaries.

North.	East.
South.	West.

Collector.

APPENDIX E.

[See paragraph 19 of Instructions.]

Form of Requisition under section 10, Act X of 1870, to be added when necessary to Notice in Appendix D.

You are hereby required to furnish the undersigned with a statement containing, so far as may be practicable, the name of every person possessing any interest in the land, or any part thereof, referred to in the notice of served on you, as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Collector.

APPENDIX F.

[See paragraph 35 of Instructions.]

Statement of Proceedings on Appeal.

1	2	3	4	5	6	7
Date of Appeal.	Date of decision of Appellate Court.	Amount finally awarded.	Amount of additional compensation.	Total (Columns 3 & 4).	Date from which abatement of revenue, if any, takes place.	REMARKS.

Collector.

APPENDIX G.

[See paragraph 35 of Instructions.]

Particulars of compensation awarded by under section , Act X of 1870, to all the persons interested in the plot of land described below, situated in the village of , Táluka . The said plot is bounded as shown in the plan hereunto annexed, which has been prepared under section , Act X of 1870, and measures acres, roods, poles, chains.

1	2	3	4	5	6	7	8	9	10	11
Names of persons in whose favour the award has been made.	How interested in the land.	GROSS COMPENSATION AWARDED.			Additional compensation awarded under Section 42, payable in cash.	Amount of interest awarded under Section 42.	Costs decreed to Government.	Costs decreed against Government.	Net amount to be disbursed in cost (Columns 4, 6, 7, *minus* Column 8, or *plus* Column 9.)	REMARKS.
		Value of abatement of Government revenue.	Amount payable in cash.	Total.						

NOTE.—The Collector will report on what grounds he determined whether a portion of compensation should or should not be paid in the form of abatement of Government revenue.

APPENDIX H.

[See paragraph 2 of Special Instructions.]

Rules for taking up Land for Railway purposes (by the Government of India), issued 29th June 1861.

1. Land required for Railway purposes may be divided into 4 classes—A., B., C., and D. *First,* Class A.—Land which a Railway Company receives free of charge, under the contract with the Government for permanent occupation. *Second,* Class B.—Land also provided free of cost, but only for temporary occupation. *Third,* Class C.—Land which the Railway Company has to provide at its own cost. *Fourth,* Class D.—Land which does not come directly into the possession of the Railway Company at all.

2. Class A. will comprise the land acquired for the permanent works of a Railway, including the road with its bridges, &c., and all stations, workshops, permanent storehouses, and the like, necessary for the line when opened, and which under the contracts is to be provided by Government, free of cost, to the Railway Companies. The occupation of this land by a Railway Company will be so far permanent that it will only cease when their contract is terminated or surrendered, and the whole lapses to Government. It is all provided free of charge.

3. Class B. will contain land essential for the execution of the permanent works of a Railway, but not required after the completion of the line in part or in whole. It also is provided free of charge—such as land for spoil banks, extra excavation to make banks, for river diversion, and for the storage of Railway materials held in stock by the Railway Company pending the construction of the line or their despatch to the works;* the occupation of this class of land will be temporary. On its restoration to the Government, the proper time for which will be settled in each case between the Railway Officers and the Consulting Engineer, it will be for the Revenue Officers to dispose of it to the best advantage of Government.

4. Class C. will contain the land which a Railway Company has to provide at its own cost. This is the land which is required for the provision or preparation of materials; for purposes contingent on the actual execution for the works on the line, or for other miscellaneous objects, which the Government recognizes as falling legitimately within the scope of the Railway Company's operations, though not giving the Company a claim to the provision of land free of charge. As a Railway Company is bound to pay for the construction of all works out of the Capital, receiving only from Government, without charge, the land on which the works stand, the provision of all materials, and the means of facilitating the execution of all works, are to be at the cost of the Railway Company.† It is proper to bear in mind, in fixing the rent, that this land will in part deteriorate by the use to which it is put and in part will not so deteriorate. In all cases, however, it will be most convenient to deal with the land, in the first instance, in the same manner. It will be taken possession of by Government, and handed over to the Railway Company for occupation at a fair rental. When the necessity for occupation ceases, the land will be given up again to Government by the Railway Company, the proper time for this being determined, as under Class B., by the Railway Officers and Consulting Engineer.

5. Class D. will contain that land which, being required in consequence of the works of a Railway, still does not come directly into the occupation of the Railway Company; it will be provided free of charge. It will be exclusively land for roads—either new roads leading to Railway stations, or to permanent storeyards or workshops, detached from the main works, diversions, or changes or old roads made necessary by Railway works.

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* This last sort of land is allowed free under the Right Honourable the Secretary of State's letter No. 25 of 30th November 1858.

† The following words were also in the original rules:—

"In this class, therefore, will fall all land for brick-making, quarrying, ballast[1] for houses, for persons employed on the work, &c., so also land for houses for Engine-drivers, and the like on the line when opened, and for other similar purposes, will come under Class C."

But H. M.'s Secretary of State for India thought that any particularization in the rule might raise questions as to the power of Government to alter or vary the terms of the contract (a power which the Government has no intention of claiming). It has, therefore, been thought best to give these words in a note, simply for the guidance of the officers of Government and parties interested, as to the construction which Government puts on the contract in regard to certain points of frequent practical application.

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[1] In the original rules, the words "for roads to works in progress" here found place. They have now been struck out as calculated to mislead. It is clear a road may be required from a site used temporarily for storage of materials also itself in Class B. This would carry the road itself into the same class. A road from brickfield or quarry would be in the same category as the brickfield or quarry, viz., Class C. Whereas a road from a detached, but permanent, store-yard, although leading "to works in progress," would not the less come under Class D., should such road still be necessary after the completion of those particular works. Thus, *generally*, the circumstances of the tenure of land *at the end of the road furthest from the railway* will decide the class into which the road itself shall be placed.

6. Inconvenience is likely to arise if Railway Companies are permitted to hold land on their own account or otherwise than as above explained. By causing them to rent from the Government all land to which they are not entitled free, in the manner above explained, simplicity in the tenure of their property will be secured, which will be a matter of importance at a future time when the Railway may be transferred to Government. The determination of the value to be paid by the Government for any land not included in Class A., which might be held by a Railway Company, would certainly be, in such an event, a great embarrassment.

7. Houses, trees, tanks, or other property on land which is not provided free of charge, and for which special payment or compensation is necessary, will be paid for at once by the Railway Company. In the case of land provided free of charge, the materials, &c., derived from the "clearance" of the surface, which then will be at the expense of Government, will be disposed of by the Revenue Officers to the best advantage.

8. All land required for a line of Railway will be applied for in continuous portions; the plans will be drawn to a scale of 150 feet to the inch, and the measurement and areas will be recorded in accordance with the fiscal divisions of villages, estates, or mauzas, parganas, and zillas, in a schedule, of which a form is annexed, showing in detail the several classes to which the land belongs.

9. The several classes of lands will be coloured pink, yellow, purple and green, respectively, in the plans, and the exact purpose to which each parcel of land is to be devoted will be noticed in the schedule.

10. Detached portions of land should be referred to some fixed point on one of the main sheets, with such distances and compass or other bearing as will enable the land to be identified at once. A corresponding entry should also be made on the main sheet to draw attention to the detached portion.

11. The general correctness of the plans and schedules of the Railway Engineers being attested by the Consulting Engineer to Government, the application will be forwarded to, and dealt with as may be necessary by, the Revenue authorities under the orders of the Local Government. The Revenue Officers are to be held strictly responsible for the regular adjustment, by Railway Companies, of all charges on account of land to be determined in the manner above explained.

12. A complete set of land plans should be recorded in the chief Engineer's Office of each Railway, and a copy forwarded to the Consulting Engineer to Government, by whom a duplicate will be given to the Revenue Board, which, in turn, will supply Collectors of districts with transcripts of parts included in their respective zillas. When it may be found expedient, in order to expedite the making over of the land, to employ a special Land Commissioner for this duty, the Railway Engineers should supply an additional copy of the land plan for the use of the Land Commissioner.

13. The Consulting Engineer to Government and local Revenue authorities will, respectively, be held responsible for the punctual fulfilment of the foregoing orders in the several departments, and for the careful record of plans in their respective offices.

14. All contemplated changes in the land in possession of a Railway Company should be promptly reported by the Railway Agent to the Consulting Engineer to Government, who will notify the same to the Local Government. It will be for the latter to see that the necessary steps are taken by the Revenue authorities for entering such changes in their records, and for carrying out all further proceedings that are requisite on such an occurrence.

15. It will be necessary for the Local Government to see that a correct register and record of title of all Railway lands is maintained, for the whole of such lands will one day revert to the Crown. Also, that all rents or payments for clearances, &c., chargeable on behalf of Government against the Railway Company are duly realized.

16. It is essential that there should be for each Railway *one* set of plans in a regular sequence to show all the land, and that the plans of each Railway Company's estate after they have once been prepared, should constantly be corrected, and always be maintained complete.

CIRCULAR No. VIII RAILWAY, GOVERNMENT OF INDIA, 22ND APRIL 1890.

RESOLUTION.—In a recent case it was found that land had been taken up by the Civil authorities for a Company's railway without the correctness of the plans and schedules having been first attested by the responsible Consulting Engineer, as required in paragraph 11 of the Circular herein read, under a misapprehension that the rules contained in this Circular were intended to apply to Guaranteed Railways only.

2. As any departure from the authorised procedure for the acquisition of land for Railway Companies may cause serious inconvenience and lead to complications, the Government of India desires to invite particular attention to the Circular which is now republished for general information; and, in order to remove any doubts on the subject, is pleased to rule that the provisions of the Circular shall apply to all railways constructed by Companies, whether Guaranteed, Assisted or Private, for which the land is acquired under the orders of Government.

3. The Government of India desires that the land plans should be prepared on a scale of 400 feet to the inch, or, where a larger scale is required, 100 feet to the inch, instead of on the scale of 150 feet to the inch, as contemplated in paragraph 8 of the Circular now republished and also prescribed in Public Works Department Circular No. XV Railway, dated 8th June 1882, which is hereby cancelled.

4. It will be incumbent on Consulting Engineers to endeavour to avoid the emplacement of the railway upon land the acquisition of which will entail either unnecessary expenditure on Government, or annoyance to the owners, if the object sought can be equally well attained by a slight alteration of the alignment, or in some other manner. The Consulting Engineers to Government and the local Revenue authorities will be held responsible that, in taking up land, the fullest consideration is given both to the convenience of the proprietors and the interests of Government. (Circulated by G. R. 1297 of 29th May 1890, P. W. D., Railway).

FORM OF SCHEDULE.

Plan. Sheet No._____
Railway_____
District_____
Schedule of land required for the use of the Railway in—
Village,_____
Pargana_____
District_____

Number on Plan.	Purpose for which required.	PAYABLE BY GOVERNMENT.									PAYABLE BY RAILWAY COMPANY.		
		A. (*Pink.*) Land for permanent occupation by Railway Company.			B. (*Yellow.*) Land for temporary occupation by Railway Company.			D. (*Green.*) Land to be occupied by Government permanently.			C. (*Purple.*) Land for occupation by Railway Company, permanently or temporarily.		
		A.	R.	P.	A.	R.	P.	A.	R.	P.	A.	R.	P.

Chief Engineer,————*Railway.*

Deputy Consulting Engineer to Government.

Extracts from Circular No. 27 of 23rd September 1869.

PUBLIC WORKS DEPARTMENT.

(RAILWAY.)

(*Modifying the Rules issued in Circular No. 55 of 29th June* 1861.)

RENT FOR CLASS C. LANDS.

1. The Government of Bombay represents that the rules laid down by the Government of India, as to the mode in which the rents for C. Lands should be calculated, will, if acted upon, lead to some loss of Government money, and recommends that rent should not, in all cases, be determined by the same rule.

2. The Bombay Government is of opinion that, for Government land leased for house building, a fixed rent, irrespective of the classification of the soil and district, or locality, should be charged, and that, where money has been paid for the surrender of a lease, 5 per cent. on the amount of compensation should be added to the rent.

3. For land taken up for houses, from private owners, 5 per cent. per annum on the purchase-money is considered by the Bombay Government to be a fair arrangement.

4. For land required for ballast pits, quarries, &c., the Government of Bombay thinks that the Company should be called upon to pay the full amount spent for the acquisition of the property, *plus* a nominal yearly rent during occupation, the proceeds from the sale of the land, when surrendered, being credited to the Company. For Government land, a yearly rent should be charged to cover deterioration, in addition to the cost of resumption, if any. The Chief Commissioner of Oudh also points out that any possible deterioration of the C. Lands, by reason of the purposes to which they may be put, does not appear to have been provided for in the rules last issued. This was referred to in the Circular Orders of 1861, on the subject of Railway lands, and was not provided for in the last rules through inadvertence.

5. The references may be met by an additional rule, and the following rules should accordingly be promulgated in supersession of those issued with Circular No. 2 R. of 1869:—

I.—The annual rent on lands in Class C. occupied by a guaranteed Railway Company, shall be fixed at 5 per cent. on the outlay incurred by Government in

taking up the land *plus* any revenue or rent payable to Government in respect of the said land.

II.—But in the case of land already belonging to, and in the occupation of the Government, the rent shall be fixed at 5 per cent. on the value of the land as estimated by the Collector.

III.—In the event of the land being required for purposes through which its letting value will be diminished, the Railway Company, on relinquishing it, shall pay, in addition to any rent paid during the occupation of the land under the previous rules, the estimated difference between the actual value of the land when relinquished and the value that the land would have had if the rent remained at the amount that was paid during the occupancy of the Company.

IV.—When land presented in free gift by a private individual for the purposes of a Railway is made over to a guaranteed Railway Company in Class C., no rent shall be charged by Government beyond the jama or revenue previously paid to Government for the land.

6. With reference to Rule III., it is observed that the real value of the land to the Government, before it was handed over to the Company, would be properly estimated on the basis of the rent charged for it. But when land has been actually paid for by the Company already, as in Bombay, no re-opening of the old transaction should take place, and the adjustment can be made when any land is given up.

7. Compensation paid for surrender of a lease, or any other charge, should be considered in fixing the rent. If the land is not in the occupation of the Government, and cannot be transferred to the Company without charge of any sort, it comes under Rule I.

8. It is optional to the Government of Bombay to fix the rent under Rule II at Rs. 5 per acre for agricultural land occupied by houses of the Company's staff, or at any other amount it may deem desirable.

APPENDIX K.

Revised Rules prescribed by the Government of India (Circular No. 7R. of 14th May 1884) for the acquisition of land for State Railways.

(RAILWAY.)

RULES FOR THE ACQUISITION OF LAND FOR STATE RAILWAYS.

I.—The general course of procedure laid down in the Public Works Code, Chapter XV paragraph 92, is to be followed on State Railways.

II.—Railway officers shall not obtain possession of land, whether by purchase, lease, or on simple toleration, except through the proper Revenue Authorities.

III.—Engineers in preparing land plans for submission will divide their applications under two heads, *viz* :—

(*a*) *Land required permanently or land necessary for the railway when it is opened for public traffic and when the works of construction are finished.*—Such lands are the sites of bridges, embankments, cuttings, fences, and other works, the cess or berm introduced for the sake of safety between the limit of the works and the adjacent spoil bank, bazár, or side cutting; roads permanently required, such as those immediately in the neighbourhood of stations, over-bridges, under-bridges, or level crossings on the railway; land or water required for the water-supply; land wanted for the preparation and reception of such materials as are used in maintenance, as ballast pits; land for the permanent diversion of water-courses, all space permanently required at the stations, whether for traffic, storage, workshops, dwellings, or recreation, and also, as a general rule, land required for side cuttings and spoil banks.

(*b*) *Land required temporarily or land necessary to be taken up, but not permanently wanted.*—Such land will be for side cuttings and spoil banks, for roads, for access to works while in progress, but which will subsequently be abandoned; for the preparation and reception of materials used in constructing the railway, as brick fields, quarries, ballast pits, or the temporary diversions of streams and highways. The sites of such dwellings as will be occupied only during construction will also come in this class.

IV.—The land to be taken up permanently for the through line of railway will be, in the first instance, sufficient for a double line, so as to allow of a cart road to exist parallel to the railway *inside* the fence. This road will be useful not only during construction for service purposes, but afterwards for access to the stations, for maintenance purposes, and for stacking materials.

V.—The enclosed sections, *which are not intended to be used as a type for fencing, but merely as an illustration showing the amount of land to be taken up,* show the widths to be allowed for different purposes, and the relative position of the road, fence, and ditch with reference to the railway. The boundary of the railway land permanently acquired is in every case to be considered as the outside edge of the ditch. Beyond the ditch a clear space or berm of not less than 6 feet must be left free from the spoil bank or side-cutting nearest to the railway, the cutting or bank being sloped off at an angle of not less than 2 to 1 to prevent any encroachment on this berm from the effects of weather. It will be seen from the section that the width of land to be permanently acquired for a line on the 5 feet 6 inch gauge will be for embankments 70 feet, for cuttings 76 feet, in addition to the width required in each case for the bases of the slopes. For a line on the metre gauge the widths will be embankments 64 feet, for cuttings 70 feet, in addition to the slopes.

VI.—Land for side cuttings and spoil banks will, as a rule, be permanently taken up by Government, and subsequently disposed of when no longer required. Estimates will provide and be sanctioned for the full cost of purchase, and should also exhibit the sum which it is estimated may be realized by the ultimate sale of the land.

Embankments under 3 feet in height will only require side cutting on one side of the railway. Slopes of side cutting will be generally 2 to 1 all round, but care must be taken to provide for exceptional cases when a flatter slope may be needed. Similarly, the contents of cuttings under 3 feet high will be laid to spoil on one side only. Side cuttings should not be too deep: a depth of 6 feet may be estimated for in calculating the width of land required for side cuttings. They should be formed into well defined tanks of moderate length; and should not, as a rule, be connected with each other or with adjacent watercourses. Valuable land should not be taken up for side cuttings or for temporary purposes. A sufficient watercourse should be provided at right angles to the centre line of railway for each culvert or bridge, and on either side of this watercourse land will be left clear of the side cuttings sufficient to prevent the water from the river running into the side cuttings. The precaution of leaving land uncut in this manner is necessary to prevent the formation of a dangerous stream parallel to the railway.

VII.—In the neighbourhood of towns or other places where land is above the ordinary value, the width of land to be taken for slopes, fence, &c., must be specially considered to secure economy.

VIII.—All land will be applied for in continuous portions and shown when practicable mile by mile or village by village, on each sheet. The plans will be drawn to a scale of 150 feet to an inch; the centre line of railway will be shown divided into chains of 100 feet, and all dimensions will be figured in feet. The name of each zilla, pargana, and mouzah will be shown on each sheet. On curves the tangential point on the centre line will be marked and the radius of curvature given. The areas in acres, roods, and poles will be recorded in accordance with fiscal divisions in a schedule (*form the same as that issued with Circular No. 10 Railway of 1871*), showing in detail the class to which the land belongs, and the purpose to which it is to be devoted. Land required *permanently* will be colored *pink;* land required for temporary occupation will be colored *yellow;* although, as pointed out in Rule VI, it will as a rule be acquired by Government permanently.

IX.—Detached portions of land should be referred to some fixed point on one of the main sheets with distances and compass or other bearings, or such reference to the published maps of the neighbourhood as will ensure a ready identification of the land. A corresponding entry should be made on the main sheet to draw attention to the detached plot.

X.—As a general rule, three complete sets of land-plans and schedules will suffice for record, *viz.*, one for the Engineer in charge of the railway, one for the local Government or Administration, and one for the Revenue authorities; but should more be required, they will be supplied by the Railway Engineers.

XI.—The general correctness of the plans and schedules submitted by the Railway Engineer in charge being attested by the Engineer-in-Chief or Manager of the State Railway, the application will be forwarded to the Revenue authorities, and will be dealt with by them under the orders of the local Government or Administration.

XII.—The land plans and schedules will be rectified from time to time as changes occur, and local Governments will see that a correct register of all railway lands is maintained.

XIII.—When land is no longer required for the railway, it will be retransferred to the Revenue authorities and disposed of by them. All contemplated changes in the land occupied by a railway should be reported to the local Government; and it will be for the latter to see that the necessary steps are taken by the Revenue authorities for entering such changes in their records and for carrying out all further requisite proceedings.

XIV.—In Native States all land will be obtained through the Political Agent, and the distinction of temporary and permanent need not be observed; but this will not make it the

less incumbent on the officials concerned to see that all land not permanently required for the purposes of the railway is restored when no longer wanted, and to keep as complete records of the land retained for railway purposes in Native States as in British territory. Such plans and schedules as the Political Agent may require will be supplied by the Railway Engineers.

FORM OF SCHEDULE REFERRED TO IN RULE VIII.

Plan No._____

District_____

*Schedule of land taken for the use of the Railway in Zilla*____

*Pargana*____

Mouza

No. of Plan.	Purpose for which required.	Class A. (Coloured Pink). Occupation, permanent. Land for the regular works of the Railway, including land for high roads and rivers, &c., &c.			Class B. (Coloured Yellow). Occupation, temporary. Land for excavations, spoil, and for contingencies of construction, for dwelling-houses, &c., &c.		
		Acres.	r.	p.	Acres.	r.	p.
	Total ...						

Superintending Engineer.

Consulting Engineer to Government.

APPENDIX L.

G. R. No. 206.

REVENUE DEPARTMENT.

Bombay Castle, 13th January 1879.

The following letter from the officiating Secretary to the Government of India, Home Department, Public, No. 2—27, dated 4th instant, is published for general information :—

"A case has recently been brought to the notice of the Government of India, in which the Civil authorities had proposed to cut a railway embankment with the object of letting off flood waters, the overflow of which threatened to cause much damage and loss. It seems desirable that district officers should be instructed not to order the destruction of any railway embankment or bridge, or other large work, whether it be the property of the State or of a private company, without first taking the advice of some responsible professional officer. As a rule, the engineering authorities charged with the control of the work concerned should be consulted.

"2. I am accordingly directed to request that, with the permission of His Excellency the Governor in Council, you will be good enough to cause all Civil officers to be instructed in the sense of these remarks. In any case of difference of opinion respecting the property of the State, the point at issue should, if time permit, be promptly referred to the Government of India for decision."

Government Resolutions on various matters connected with Act X of 1870.

Act inapplicable except to acquisition for public purpose.

Government in their Resolution No. 2337* of 12th June 1869 held that 'the declaration required by the Act could not properly be made with reference to any lands which it is intended to re-convey to individual persons for the erection of buildings for private occupation, as the proposed use does not come within the definition of a public purpose.' They further said: 'the notification should be limited to such lands as may be required for the roads, public buildings and public walks of the proposed new town and the intermediate sites must be left to the disposal of the present owners.'

"2. These same orders, which were quite in accordance with the intention of the legislature, apply equally to the present Act X of 1870. Subsequent references made by Government to the Governments of Bengal and Madras elicited the fact that in those Presidencies also the term 'public purpose' was strictly construed." (G. R. No. 8202 of 17th October 1884, R. D.)

Notification under Section 4.

There is no question that the notification under section 4 of Act X of 1870 may describe the locality in which land is likely to be needed in the most general terms, but if it is described by enumeration of villages, it seems advisable that the list of villages should be complete in order that difficulty may not arise in case of a prosecution under section 52 or even on action being taken under section 4, because if certain villages are named, it will be inferred by the Courts that the notification does not extend to others which are not named. (G. R. No. 8880 of 11th November 1884, R. D.)

Result of delay in taking possession under the Act.

Memo. by L. R.:—"By section 54 of Act X of 1870 it is obligatory on Government, when an award has been made by the Collector or a reference directed to the court, to complete the acquisition, and the courts would no doubt hold that the acquisition should be completed within a reasonable time after the amount of compensation has been finally settled by the Collector's award or by the court.

"2. Under section 16 of the Act, the Collector *may* take possession before the amount of compensation is settled, when a reference has been directed to the court; but this is a provision for cases in which the land is wanted without delay, and section 42 provides that 6 per cent. interest shall be paid from the time of taking possession, if it is taken before the compensation is paid. But where the acquisition is not immediately necessary it may often be to the advantage both of Government and of the owner that the Collector should not take possession till some time after the amount of compensation has been settled, as, for instance, when the owner has crops standing on the land which he wishes to bring to maturity and then remove. It is for this reason, I think, that the Act prescribes no period within which possession must be taken.

"3. But in the case reported by the Collector of Poona the court settled the compensation more than two years ago and it was not to suit the convenience of the owner that the Collector deferred taking possession all this time, but because the Irrigation Department were not in immediate want of the land. The owner knew, however, that the Collector might at any time take possession, and that if he should cultivate it, he would run the risk of losing the fruits of his labour and expense. A prudent owner would under such circumstances refrain from cultivating and hold Government responsible, if they failed to complete the acquisition and pay the compensation awarded by the court within a reasonable time.

"4. Had the owner in this case behaved in this manner and called upon Government from time to time to complete the acquisition, he would, I think, have a good claim for interest on his compensation money, *not* under section 42 of the Act, but by way of damages. It appears, however, that he has remained silent, and it is stated that he has cultivated the land for some portion of the time and reaped the crops. Whether in the uncertainty which existed as to when the Collector would take possession he was able to realize the full fruits of the soil may be doubted, but the fact that he realized something would go in mitigation of his claim for damages.

"5. I would recommend that the Collector now take possession of the land at once or, if the owner has crops on it at present, as soon as they are removed, and that he tender to the owner simultaneously the amount of compensation awarded by the court; and if the owner persists in claiming interest by way of compensation for the delay that has occurred in completing the acquisition, I would suggest that fuller inquiry be made into the circumstances of the cultivation of the land, and that the owner's own statement regarding it be taken. Government will then be in a position to determine whether some compensation appears to be fairly due to him for the delay, or, whether they will leave him to his remedy in the civil courts. (G. R. No. 1288 of February 1885, R. D.)

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* Quoted at page 629 of Nairne's Revenue Hand-book, Third Edition.

Application of the Act where possession has already been taken.

Memo. by L. R:—"I do not think that land which has already been taken possession of by Government and made over to the Railway Company, can be subsequently acquired under Act X of 1870, for the simple reason that there is nothing to acquire, and because the declarations and notices required by the Act refer exclusively to *intended acquisition*. Under the Act the Collector can only take possession of land *after* an award under section 14, or a reference to the Court under section 15, or in cases of urgency, after the expiration of 15 days from the date of notice under section 9.

"If matters could be restored to the *status quo ante*, and the land thus reverted to the parties originally interested in it, then the Act might be enforced; but if the land has been already taken up under private agreement with some of the parties interested, the only course available, as far as I can see, is to endeavour to come to terms with the remaining interested parties whose consent has not yet been obtained."

Result of possession taken before award or direction of Government under section 17.

Memo. by L. R.:—"A persual of sections 8 and 9 of Act X of 1870 shows clearly that its provisions are intended to apply to land of which the persons entitled thereto are in possession. The legislature did not contemplate that any Department of Government would enter upon land unauthorizedly and retain possession as a trespasser, and then afterwards seek to acquire a legal title thereto; and the Act, of course, makes no provision for such a case.

"2. Nevertheless, there is no legal objection, I think, to measures being taken now for acquiring the land under the Act. If it is possible, it would be expedient that possession should be restored to the rightful holders before such measures are set on foot; but this is not indispensable. In any case the acquisition will count only from the date on which the Collector lawfully takes possession under section 16 or 17 of the Act. The Act does not empower the Collector or other officer when making an award of compensation under it to settle damages for trespass previous to the legal acquisition of the land. For this, unless the Collector and the parties can come to terms separately, an action will lie against Government." (G. R. No. 441 of 7th February 1884, R. D.)

Where possession has been so improperly taken but not by Government.

"Memo. by Acting L. R:—It appears that the Honourable Mr. Naylor held that under certain circumstances a good title could be secured to Government under the Land Acquisition Act, notwithstanding the previous illegal occupation of land by Government.

"2. In the present case there is nothing to show that Government ever took possession illegally of the land in dispute at present occupied by the Pandharpur market. It seems merely to have assigned its interest, such as it might be, to the Municipality, and that body took possession and built on the ground without regard to the rights of Tátya bin Mandir. Under these circumstances as the land is not in the possession of Government at present, I can see no legal objection in the wording of the Land Acquisition Act to its acquisition for a public purpose, notwithstanding that purpose may be its use by the Pandharpur Municipality as a market.

"3. Although the Municipality has heretofore been in occupation of the land as a trespasser, it seems to me competent to Government, if it thinks fit, now to remedy the defect of title by taking up the land for its use in the manner proposed, subject, of course, to the payment by it of such compensation as may be awarded to Tátya bin Mandir or any other claimant. Had Government itself been the trespasser, possibly the case might have been different, but this is a point on which I need express no opinion as it does not arise." (G. R. No. 223 of 11th January 1885, R. D.)

Interest under section 48 on account of Award from date of taking possession.

The Bombay High Court has ruled that the District Court has no power to determine questions as to interest and payments of awards under Act X of 1870, but that if the District Court's jurisdiction is not objected to when the case is before that Court, its decree will not be interfered with on appeal: Dipaji Chandratao *v.* Collector of Poona. (Decided 20th March 1890, as yet unpublished.)*

Payments where land is taken by private arrangements.

†Rules 5 and 6 of the rules prescribed by the Government of India regulating the procedure to be observed in bringing to account payments of compensation for land taken up under the Land Acquisition Act may be observed in the cases of lands required by private negotiations outside the Act. (G. R. No. 8762 of 13th December 1886, R. D.)

Payment of Awards under the Land Acquisition Act by Cheques.

Resolution of the Government of India in the Department of Finance and Commerce, dated 14th August 1886.

*It is to be noted, accordingly, that if an application is made to a District Court, to determine the amount of interest payable under section 42, or to obtain an order for the payment of the compensation with interest, objection should *at once* be taken to the jurisdiction of the Court, which, when the award and apportionment have been made, is *functus officio*, and has no jurisdiction in execution under the Act. (Note by Editor.)

†Vide *infra* p. 102.

Extract paragraph 3 of the letter from the Government of Bengal, No. 211-T-F., dated the 28th April 1886, as given below :—

The Lieutenant-Governor here desires to express his opinion that all payments of awards in land acquisition cases should be made by means of cheques, and that the use of cheques should be safe-guarded by a rigid observance of the following rules :—

(1) Every cheque-book should contain a certain number of cheques with consecutive printed numbers, and each book should contain its own serial number.

(2) The serial number of the cheque-book, and the number of cheques it contains, should be reported to the Treasury Officer before the book is brought into use.

(3) The cheque-book should be kept under lock and key by the Land Acquisition Officer himself.

(4) The cheques should be filled up by the Land Acquisition Officer, with his own hand, in words as well as figures, and cheques should be enfaced under Rs.

(5) A periodical examination of pass-books from the treasury with the counterfoils of the cheque-books should be made by the Land Acquisition Officer himself.

"RESOLUTION.—The Government of Bengal proposes that all payments of awards in land acquisition cases should be made by means of cheques, but there is reason to fear that the adoption of an invariable rule of this nature might in some instances be productive of inconvenience.

"When the property taken up by Government is near a treasury, the system of payment by cheques may be as convenient as payments in cash by the Land Acquisition Officer. But where the property is situated at a distance from a Treasury, and when the Land Acquisition Officer pays the compensation at or near the village in which the owners reside,—a course which is enjoined in paragraph 9 of the Resolution of 29th June 1886, the making of payments by means of cheques would probably be inconvenient to the payees, and the advantage of making final payments on the spot would be lost. The Governor-General in Council is therefore not prepared to direct that all payments shall be made by cheque. There is, however, no objection to a Local Government directing any particular Land Acquisition Officer to make all his payments by cheque if it appears that this practice will not cause inconvenience of the kind above referred to.

"The rules proposed by the Government of Bengal in order to safe-guard the use of cheques are approved. Those rules should be observed by all officers paying compensation for land who draw money from the treasury by cheque, whether in lump sums to be distributed to the payees in cash by the officer, or in detail, each cheque being payable to one of the persons to whom compensation is due." (G. R. No. 6596 of 17th September 1886, R. D.)

Orders of Government of India on the question of the debit of cost of temporary subordinate establishment specially engaged in connection with land acquisition, to work under officers of the Revenue Department, not placed at the disposal of the Public Works Department.

'In the cases provided for in the Civil Account Code, Rule 5, Chapter VI, *i.e.*, when the Civil Officer is made a Public Works disburser, there is no objection to any special establishment entertained by him (under orders of Government) being charged to the works concerned. But if he is not a Public Works disburser, then the charges should be brought to account in the Civil Department, and should not be debited to the Public Works Department.' (G. R. No. 2508 of 30th March 1889, R. D.)

Procedure to be observed for the payment of compensation for land taken up for public purposes under the Land Acquisition Act.

Government Resolution No. 5518, dated 4th August 1886, Revenue Department. Resolution of the Government of India in the Department of Finance and Commerce, No. 1580, dated 29th June 1886 :—

"It has been brought to the notice of the Governor General in Council that the orders regarding the payment of compensation for land taken up for public purposes under the Land Acquisition Act, 1870, and the audit of such payments are not everywhere carefully observed, and that it is desirable to consolidate and in some respects to modify these orders.

"2. His Excellency accordingly, in supersession of all previous orders, directs that the following procedure shall be observed.

"3. After all preliminaries in respect to estimate, &c., that may be required under departmental rules in force for the time being have been duly carried out, the land will be taken up under the Act either by the Collector or by some special officer who is placed at the disposal of the Public Works Department, and invested with the powers of a Collector under the Act; the procedure differs in the two cases.

"4. Officers who are especially employed for this work, being invested with the powers of a Collector under the Act and placed at the disposal of the Public Works Department, are regarded as Public Works disbursers and are supplied with funds in the same manner as an Executive Engineer, as described in Chapter 23 of the Civil Account Code. The following procedure shall be observed by such officers.

"5. When the amount of compensation is accepted by the persons interested, and an award is made under section 14 of the Act, the officer shall have a statement prepared in the appended form (marked A) showing the amounts payable to each person under the award, and shall on the day the award is made forward a copy of the statement, signed by himself, to the Examiner of Public Works Accounts with whom he is in account. Before signing the copy, the officer should carefully satisfy himself that it correctly shows the amounts due under the award, and should himself both in the original and copy enter the total of column 6 of the statement in words.*

"6. In paying the amounts due under the award, the officer shall take the receipt of each person to whom money is paid on a separate voucher in the accompanying form (marked B), containing a reference to the item showing the amount due to that person in the statement prescribed in the preceding paragraph. The officer shall forward the receipts of the payees to the Examiner of Public Works Accounts with whom he is in account when forwarding to him the account of the month in which the payments are made.*

"7. In the event of the payees not presenting themselves for payment within a year from the date of the award, the amounts due may be paid into the Treasury on Revenue deposit, and vouched for in the accompanying form (marked C). Every endeavour should, however, be made to secure the presence of the payees to receive payment, so as to avoid as far as possible payment into the Treasury on deposit. When the payees ultimately claim payment of sums placed on deposit, the amounts will be paid to them in the same manner as ordinary Revenue deposits, under the authority of the Collector.

"8. When the compensation offered is not accepted by the persons interested, and the amounts payable are consequently settled by the award made by the Court under the provisions of Part III of the Act, the special officer shall, as soon as he ascertains what the award of the Court is, prepare a statement in Form A showing the amounts due under the award, and forward a copy to the Examiner in the same manner as prescribed in paragraph 5. In paying the amounts due under such award, the officer shall take from each person to whom a payment is made a receipt in Form B, or, in the event of the payees not presenting themselves for payment within a year from the date of the award, from the Treasury Officer in Form C, containing a reference to the entry showing the amount due in the statement just referred to, and shall forward those receipts to the Examiner of Public Works Accounts in forwarding to him the accounts of the month in which the payments are made.

"9. The special officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong. This will make it more easy to secure the attendance of the payees, and so reduce the number of sums which it will be necessary to place on deposit under paragraph 7.

"10. In any case in which a reference is made to the Civil Court, and the award of the Court is not made till after the special officer has been relieved of his special duties, the payments due under the award shall be made by the Collector, who will observe the same procedure as if the reference to the Civil Court had been made by himself, as prescribed in paragraphs 11 and 12 below.

"11. When the land is taken up by the Collector or other Civil Officer not specially employed for the work, such Collector or Civil Officer is not a Public Works disburser, but draws money for payment due under the award, made by him or by the Civil Court, from the Civil Treasury. Such Collector or Civil Officer shall, as soon as he makes the award, or as soon as he ascertains that an award has been made by the Civil Court, prepare a statement in Form A showing the amounts due, and forward a copy thereof to the Examiner of Public Works Accounts concerned in the manner prescribed in paragraphs 5 and 8.

"12. In making the payments due under the award, the Collector shall take from each person to whom payment is made a receipt in Form B containing a reference to the particular entry in the award showing the amount due to the payee. These receipts will be the Treasury Officer's vouchers for the payments, and shall be forwarded by him with the accounts of the month to the Accountant General of the province, who will in ordinary course forward them to the Examiner of Public Works Accounts. In the event of the payees not presenting themselves to receive

* These rules may be observed in the case of lands acquired by private negotiations outside the Act (G. R. , 13th December 1886, R. D.)

payment within a year from the date of the award, the amounts due may be placed on Revenue deposit, and receipts taken in Form C in the same manner as is provided in Rule 7.

"13. The Treasury Officer has no concern with the award or with the award statement; he makes the payments on the authority of the Collector, or other officer assessing compensation. The Collector may either draw the amount due to each payee separately, in which case he should countersign the receipt in Form B, and make it payable at the Treasury to the payee, altering the words 'Paid in my presence $\frac{\text{in cash}}{\text{by cheque}}$' to 'Pay'; or he may draw the total amount due under the award on his own receipt as an advance, and after making the payments forward the receipts of the payees to the Treasury Officer in adjustment of the advance. In the former case, an advice list of the forms passed for payment should be sent to the Treasury Officer, who in turn should send weekly an advice of orders paid.

"14. Whether the payment is made by a special officer or by the Collector (or other Civil Officer), the audit of the Examiner of Public Works Accounts shall consist in seeing that every payment is supported by a receipt in Form B or C, and that the amount paid on such receipt is the amount payable to the payee under the award, as shown in the statements of which he will have received copies under the preceding orders. The Examiner will also note in the last column of Form A the date on which possession is taken, as reported to him, by the Executive Engineer or other officer.

"15. The Examiner will, as he receives the vouchers, fill in the entries in column 8 of the award statement (Form A); and as he receives the reports of possession he will fill in the entries in column 9: when all the vouchers showing either payment to the payee or payment into the Treasury on deposit and the reports of possession have been received, he will forward a copy of the completed statement in Form A to the Chief Revenue Authority. This will complete the audit of the Examiner; any other or further returns or reports from the officers who assess or pay compensation, and any reports regarding the payment of sums placed on deposit under Rules 7 and 12 above, will be disposed of by the Chief Revenue Authority without reference to the Examiner.

"16. When the land is acquired for, and the cost is debitable to, the Military Works Department, the procedure above laid down will be observed, the Examiner of Military Works Accounts being substituted for the Examiner of Public Works Accounts.

"17. When the land is acquired for, and the cost is debitable to, any other Department than the Public Works Department or Military Works Department, the procedure will also be the same, the Account Officer who will audit the payments being subsituted for the Examiner of Public Works Accounts.

"18. In any case in which land is acquired for a Municipality or other body financially independent of Government, the Local Government may direct that the payments, instead of being made and audited in the same manner as the ordinary payments of such body, shall be made and audited as if the land were being acquired for Government. If the Local Government issues such an order, the Collector or other officer who makes payments on account of the land acquired shall draw funds from the Treasury and make payments in the manner laid down in these rules, using the forms prescribed, and shall render his accounts to the Civil Accountant General. The Municipality or other body will pay the estimated cost of the compensation to the credit of Government in advance on such dates and in such instalments as the Local Government may direct, further payment to Government being required as soon as the Accountant General reports that the payments made exceed the amount received in advance. The Accountant General will deal with the accounts and payments as prescribed in these rules, debiting the payments against the advances received from the Municipality or other body.

A.

NO. AND DATE OF STATEMENT._____.

DATE OF AWARD._____.

Name of work for which land has been acquired_____.

No. and date of declaration in *Gazette, viz.*, No._____, dated_____ page_____.

*Statement showing compensation awarded by*_____ *under Section* _____, *Act X of 1870, to all persons interested in the plot of land situated in the village of*_____, *in estate*_____, *No.*____ *on the Revenue Roll of the District of*_____, *Pargana*_____.

1	2	3	4	5	6	7	8*		9*	
Serial Number.	Names of persons to whom payment is due under the award.	Area of land.	Abatement of Land Revenue.	A valuation of any buildings that may be taken upon the land.	Total amount due to each person including the amount shown in column 5, the amount awarded for the land, interest, costs and any other amounts due to the payee in connection with the acquisition of the land.	Remarks.	NUMBER AND DATE OF VOUCHER.		DATE ON WHICH POSSESSION OF THE LAND WAS HANDED OVER TO THE DEPARTMENTAL AUTHORITIES FOR WHOM IT IS ACQUIRED.	
							No.	Date.	Date.	Reference to the report, stating the date.
		A. R. P.	*R. a. p.*	*R. a. p.*	*Rs. a. p.*					

*To be filled up in the Examiner's Office.

NOTE.

Each award statement should be confined to the lands to be taken under one declaration—*i.e.*, the awards given for lands acquired under more than one declaration should not be incorporated in one statement, but as many separate statements submitted as there are declarations.

B.

No. of Voucher _____

Name of work for which the land has been acquired _____

Serial No. _____ in Award Statement No. _____ dated _____

Name of payee _____

I _____, of _____,

pargana _____, zillah _____,

do hereby acknowledge to have received Rupees _____

_____ annas _____ pies _____ on account of cost of land taken up by Government, as detailed on reverse.

Signature of the payee _____

Locality _____

NOTE—The receipt should be in English; but when the payee is unable to write in English, he may give a receipt in the vernacular.

B.

No. of Voucher _____

Name of work for which the land has been acquired _____

Serial No. _____ in Award Statement No. _____ dated _____

Name of payee _____

I _____, of _____,

pargana _____, zillah _____,

do hereby acknowledge to have received Rupees _____

_____ annas _____ pies _____ on account of cost of land taken up by Government, as detailed on reverse.

Signature of the payee _____

Locality _____

NOTE—The receipt should be in English; but when the payee is unable to write in English, he may give a receipt in the vernacular.

B 129—27

Details of Land, &c., and their Values.

*Mauze*_____, *Pargana*_____, *Zillah*_____

*Land*_____ *Bigha*_____ *Cotta*_____ *Chuttack.*

*Value*_____ *Rupees*_____ *Annas*_____ *Pies.*

Details of Land, &c., and their Values.

*Mauze*_____, *Pargana*_____, *Zillah*_____

*Land*_____ *Bigha*_____ *Cotta*_____ *Chuttack.*

*Value*_____ *Rupees*_____ *Annas*_____ *Pies.*

C.

ame of work for which land has been acquired _____

To the Officer in charge of _____ Treasury.

Please receive for transfer to credit of Revenue deposits the sum of Rs. _____ on account of compensation for land taken up for the above purpose payable as detailed below :—

Serial No. in Award Statement No.	Names of parties.	Area of land.	Amount payable to each.			Remarks.
		Acres.	*Rs.*	*a.*	*p.*	
	Total ...					

Land Acquisition Officer.

Dated *189*

Received the above amount and credited to Revenue deposits.

Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

C.

Name of work for which land has been acquired _____

To the Officer in charge of _____ Treasury.

Please receive for transfer to credit of Revenue deposits the sum of Rs. _____ on account of compensation for land taken up for the above purpose payable as detailed below :—

Serial No. in Award Statement No.	Names of parties.	Area of land.	Amount payable to each.			Remarks.
		Acres.	*Rs.*	*a.*	*p.*	
	Total ...					

Land Acquisition Officer.

Dated *1889*

Received the above amount and credited to Revenue deposits.

Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.